

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAMIEN WELLS,

Defendant.

8:24CR49

**AMENDED
ORDER**

On April 17, 2024, the Court held a hearing on the Motion to Withdraw as Attorney and Request for Formal *Faretta* Hearing Regarding Defendant's Request to Represent Self and/or Refusal to Accept Court-Appointed Counsel ([Filing No. 9](#)) filed by the defendant's court-appointed stand-by counsel, Richard McWilliams. The Court appointed Mr. McWilliams as stand-by counsel on April 4, 2024, at the defendant's initial appearance and arraignment for purposes of filing a *Faretta* motion. The defendant refused to participate in and obstructed his initial appearance proceedings. (Filing No. 8). Stand-by counsel filed the motion to withdraw and requested a *Faretta* hearing, stating the defendant has refused to accept court-appointed counsel, and sought a definitive answer to the question, "who is performing the lawyer function in this matter?" ([Filing No. 9](#)). The defendant refused to come out of his jail cell to participate in the hearing on the motion.

The Sixth Amendment grants a criminal defendant the right to represent himself at trial without the assistance of counsel. *United States v. Atkins*, 52 F.4th 745, 750 (8th Cir. 2022) (citing *Faretta v. California*, 422 U.S. 806 (1975)). But, a defendant's invocation of the right to self-representation must be clear, unequivocal, knowing, and intelligent. See *Faretta*, 422 U.S. at 835-36. Because the defendant refused to attend or participate in the *Faretta* hearing, at this time the Court has no basis upon which to find the defendant has clearly, unequivocally, knowingly, and intelligently invoked his right to self-representation. As such, at the hearing the Court denied counsel's motion to withdraw as stand-by counsel, and answers that Mr. McWilliams is now the individual "who is performing the lawyer function in this matter."

The Court finds that the above-named defendant is eligible for appointment of counsel pursuant to the Criminal Justice Act, 18 U.S.C. §3006A, and Amended Criminal Justice Act Plan

for the District of Nebraska. Mr. McWilliams shall be appointed as the defendant's counsel in all respects. Accordingly,

IT IS ORDERED:

1. Richard McWilliams of the Federal Public Defender for the District of Nebraska is appointed to represent the above named defendant in this matter. In the event that the Federal Public Defender accepts this appointment, the Federal Public Defender shall forthwith file an appearance in this matter. In the event the Federal Public Defender should decline this appointment for reason of conflict or on the basis of the Criminal Justice Act Plan, the Federal Public Defender shall forthwith provide the court with a draft appointment order (CJA Form 20) bearing the name and other identifying information of the CJA Panel attorney identified in accordance with the Criminal Justice Act Plan for this district.
2. The Clerk shall provide a copy of this order to the Federal Public Defender for the District of Nebraska.

DATED this 17th day of April, 2024.

BY THE COURT:

s/ Michael D. Nelson
United States Magistrate Judge